

*Correspondence*



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## International Air Transport Association

Washington Office

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October 18, 1995

Mr. Donald H. Horn  
Assistant General Counsel  
for International Law, C-20  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

OST-95-232-10

Dear Mr. Horn:

On instructions from the IATA General Counsel, Lorne Clark, I have been reporting regularly on the progress of IATA's Airline Liability Conference, its Working Groups, and follow-up action.

The last formal submission was attached to my letter to you of August 17, 1995, and reported on the Airline Liability Conference Working Groups' 2nd meeting, held in Washington, 7-8 August 1995. At that meeting, the Working Groups instructed the IATA Secretariat, in consultation with IATA's Legal Advisory Group (LAG), to prepare a draft text consistent with the principles adopted by the Working Groups, viz: general agreement on unspecified limits for full recoverable compensatory damages, with compensation to be calculated in accordance with the law of the domicile of the passenger; reservation of the Treaty defenses under Warsaw/Hague. Draft texts were prepared and circulated. These were completed in consultation with the Legal Advisory Group at a meeting in Montreal on October 2, 1995.

The LAG formally endorsed the Inter-carrier Agreement and a Draft AGM Resolution which calls on Members to sign, and asks them to request their Governments to approve, the Agreement. Copies of these documents are attached as Appendices A and B.

These documents were referred, in writing, to IATA's Strategy and Policy Committee (SPC) which has now approved them and will recommend them to the IATA Executive Committee which is scheduled to meet on 29 October, the day before the Annual General Meeting (AGM). Both meetings will take place in

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Kuala Lumpur. IATA's Secretariat is encouraging all of its Member airlines to endorse, and to sign, the Intercarrier Agreement and to adopt the AGM Resolution to the same end. We hope to achieve the maximum possible commitment to this proposal to improve the passenger liability regime in international air transportation worldwide. IATA's General Counsel, and others, have met with a number of regional carrier organizations to explain the Intercarrier Agreement, to promote the broadest possible support for it. (IATA can provide you with informal reports on these meetings at your convenience).

Of course, the version of the Agreement to be signed by the carriers will be specifically "subject to government approval," and we will submit the Agreement to you as required by Orders 95-2-44 and 95-7-15 by 15 November 1995.

I will also provide you with informal reports at the conclusion of the various steps in the IATA process. I believe that IATA is performing in a manner consistent with the Department's instructions, and I expect that you will advise us if you require anything further.

Best regards.

Sincerely,

A handwritten signature in black ink, reading "David M. O'Connor". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David M. O'Connor  
Regional Director, US

cc: Ms. Jennifer Richter, Dept. of State  
Mr. Gary Allen, Dept. of Justice  
Mr. Lorne Clark, General Counsel, IATA

**PROPOSED  
INTERCARRIER AGREEMENT  
ON PASSENGER LIABILITY**

1. The undersigned carriers agree to take action to waive the limitation of liability on recoverable compensatory damages in Article 22 paragraph I of the Warsaw Convention\* as to claims for death, wounding or other bodily injury of a passenger within the meaning of Article 17 of the Convention, so that recoverable compensatory damages may be determined and awarded by reference to the law of the domicile of the passenger.
2. Nothing in this Agreement shall affect the rights of the passenger or the claimant otherwise available under the Convention.
3. The undersigned carriers reserve all available defences pursuant to the provisions of the Convention; nevertheless, any carrier may waive any defence, including the waiver of any defence up to a specified monetary amount of recoverable damages, as circumstances may warrant.
4. The undersigned carriers reserve their rights of recourse against any other person, including rights of contribution or indemnity, with respect to any sums paid by the carrier.
5. The undersigned carriers will encourage other airlines involved in the international carriage of passengers to apply the terms of this Agreement to such carriage.
6. The undersigned carriers agree to implement the provisions of this Agreement no later than 1 November, 1996 or upon receipt of requisite government approvals, whichever is later.

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\* "WARSAW CONVENTION" as used herein means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.

**DRAFT**

**Resolution for the 51st Annual General Meeting - Kuala Lumpur**

**Intercarrier Agreement on Passenger Liability and  
1977 Montreal Protocol 4 on Cargo**

**WHEREAS:** The uniform rules provided by the 1929 Warsaw Convention are essential to the efficient international carriage of passengers and cargo, and are of great benefit to passengers, shippers and the airline industry;

**WHEREAS:** Governments have not been able to adopt binding modifications to the Warsaw Convention, in particular with respect to the liability regime, since entry into force of the 1955 Hague Protocol;

**WHEREAS:** International airlines have previously acted together to enhance the applicable liability regime to the benefit of passengers;

**Taking Into Account** the elaboration of a new Intercarrier Agreement on Passenger Liability pursuant to the decision of the Airline Liability Conference held in Washington DC 19-23 June 1995; and

**NOTING THAT** the IATA Legal Advisory Group has recommended endorsement of the new Agreement;

**The 51st Annual General Meeting**

1. Calls upon Member airlines to sign the Intercarrier Agreement on Passenger Liability and seek the requisite governmental approvals as soon as possible;
2. Calls upon governments to provide such approvals expeditiously so that the Agreement can be brought into force by 1 November 1996 or as soon as possible thereafter; and
3. Urges States that have not done so to become Parties to the 1977 Montreal Protocol 4.